

Testimony of Thomas R. Johnson

1. Good morning, my name is Tom Johnson. A copy of my resume, which accurately describes my education and work experience, is exhibit YCWA-6. As discussed in that exhibit, I was the Assistant Manager for Project Development for the Yuba County Water Agency (“YCWA”) from February 2003 through June 2004, and I presently work as a consultant and project manager for the Agency.
2. I would like to start with background and an update on the proposed Lower Yuba River Accord (the “Yuba Accord”). As you are well aware, the Yuba Accord and the 2007 Pilot Program are closely related.
3. The Yuba Accord represents set of a proposed collaborative settlement agreements that resulted from a long and detailed process to develop a set of instream flow schedules that would address the biological needs of the Lower Yuba River while considering available water supplies and operational constraints.
4. I personally attended over two years of frequent technical team meetings at which the participants worked diligently to communicate their interests in, and perspectives on, Lower Yuba River fisheries issues, and worked collaboratively to develop a flow regime for the Lower Yuba River that would both maintain or improve the conditions for various fish species in the river and respect the physical and operational constraints on the river. Participants in those technical team meetings were biologists from CDFG, USFWS, NMFS, YCWA and a group of non-governmental organizations (“NGO’s”), and, as necessary, operations and modeling experts. Those biologists are knowledgeable of recent studies and current conditions on the Lower Yuba.
5. After the initial development of the biological framework of the proposed Lower Yuba River flow schedules and monitoring requirements by the technical team, I personally attended an additional year and a half of frequent meetings and discussions wherein a group of attorneys and negotiators representing the various parties interested in Lower Yuba River flows worked to develop the comprehensive proposed Lower Yuba River Fisheries Agreement. This proposed Lower Yuba River Fisheries Agreement fully integrates the biology-based flow regime developed by the technical team, and includes additional benefits, including a framework for communication and shared management decisions for the Lower Yuba River. Much of the effort in developing the Fisheries Agreement was dedicated to finding common incentives for performance, and robust and flexible but solid provisions to ensure conformance by the parties to the Agreement. The parties who worked to craft this proposed Fisheries Agreement believe that it can be the basis of truly collaborative approach to managing this resource.
6. The proposed Yuba Accord consists of the proposed Fisheries Agreement, a proposed Water Purchase Agreement and proposed Conjunctive Use Agreements. Although these agreements will be signed by different parties and concern different matters, all three agreements are interrelated, and all three agreements must be in effect for any one agreement or the Yuba Accord to go into effect. The proposed Fisheries Agreement is the product of a collaborative process and contains an instream flow regime that is designed to be equivalent or superior to the current regulatory baseline from the standpoint of Lower Yuba River fisheries resources. The proposed Fisheries Agreement also will set up a multi-party management framework for the Lower Yuba River and provide substantial funding for core monitoring and focused studies and habitat-improvement measures. The three proposed Yuba Accord agreements together represent a new water use paradigm, deriving transferable water from a biologically-

based flow regime, utilizing conjunctive use flexibility to ensure greater water availability for the river, earmarking transfer revenues for conjunctive use and River Management Fund needs, and providing frameworks for collaborative management and contractual performance incentives.

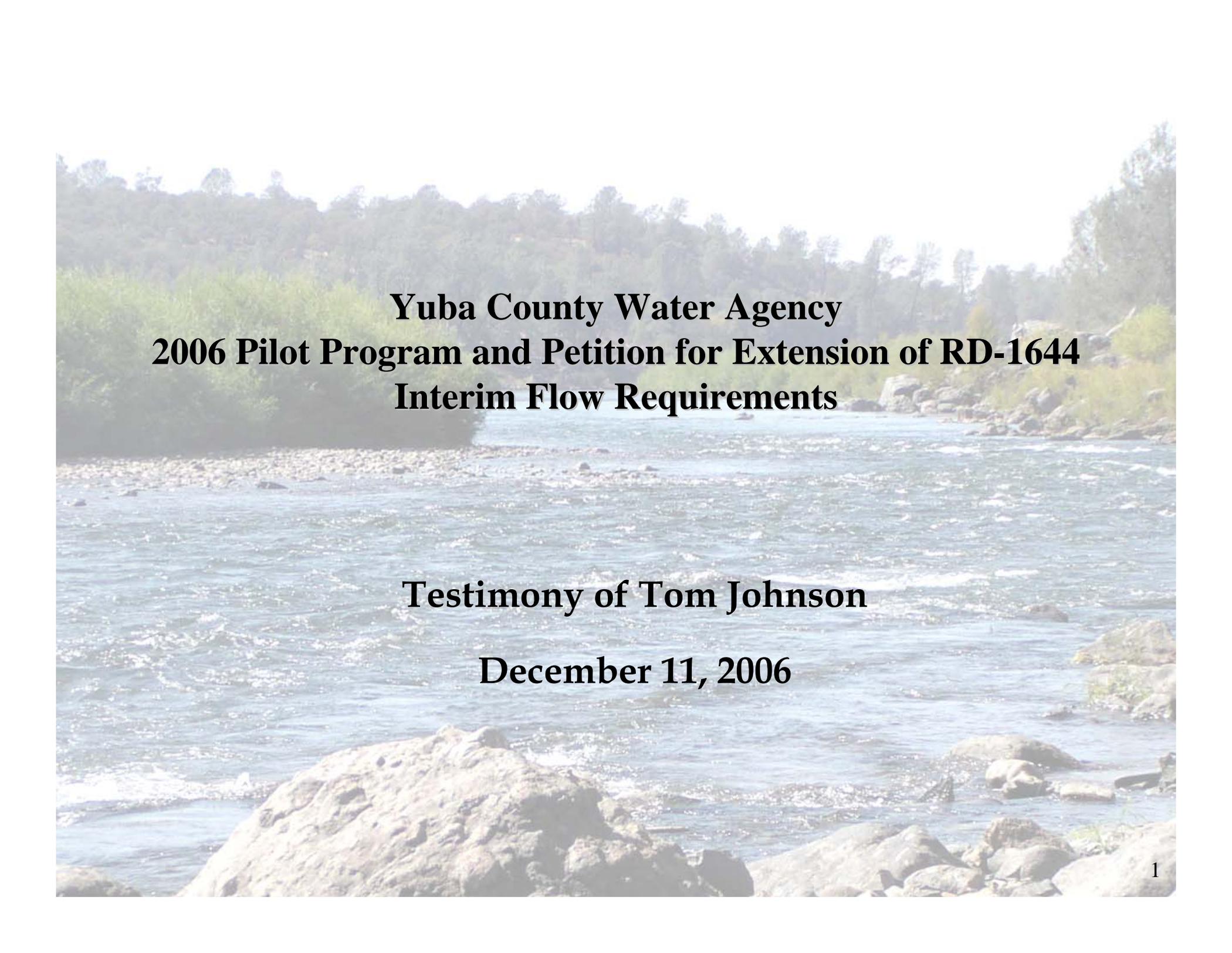
7. In April 2006, the SWRCB approved the petitions to effect the 2006 Pilot Program, including the Petition to Change the Effective Date of the Long-Term Instream Flow Requirements Established in Revised Water Rights Decision 1644, and the Petition for Temporary Change Involving the Transfer of Water from YCWA to DWR. The purpose of those petitions was to allow implementation of the higher instream flows developed in the Yuba Accord process while the environmental compliance documents (including a combined EIR/EIS and necessary ESA consultation) for the Yuba Accord are being prepared. Additionally, the 2006 Pilot Program and extension of the RD-1644 Interim flow requirements allowed for testing various aspects of the proposed Yuba Accord agreements while allowing sufficient safeguards in the water supply for Yuba County.
8. Water year 2006 turned out to be a very wet water year, a 'Schedule 1' water year pursuant to the North Yuba Index of the 2006 Pilot Program. In fact, 2006 has been wet enough to require releases of up to a few thousand cfs above the requirements of Schedule 1 to pass high spring runoff flows and to evacuate the reservoir to the end-of-season storage level required by YCWA's 1966 contract with the Pacific Gas and Electric Company. As a result, for the most part flows in the Lower Yuba River were well in excess of 2006 Pilot Program and regulatory minimums. A further consequence of the very wet conditions was that there was no YCWA water transfer during 2006 – the Delta was in 'excess conditions', with inflow to the Delta in excess of requirements, for the entire potential transfer window.
9. Despite the wet hydrology and lack of a water transfer, other aspects of the 2006 Pilot Program were implemented. YCWA received an up-front payment for the 2006 Pilot from EWA, and as a result, provided funding for the River Management Fund (RMF) for 2006. YCWA and CDFG both made substantial in-kind contributions to the RMF in 2005, and are in the process of similar substantial contributions in 2006 in accordance with the provisions of the 2006 Pilot Program. The biologists and operators that are the members of the River Management Team (RMT) met regularly, to discuss and provide input into Lower Yuba River operations and to develop study plans for a 2006 and 2007 suite of studies. In 2006, water temperature monitoring, spawning escapement, egg retention and upstream migration (VAKI fish counter) studies are underway, with a similar suite plus rotary screw trapping in the planning stages for 2007.
10. YCWA and the Bureau of Reclamation are preparing a comprehensive EIS/EIR for the Yuba Accord. YCWA, Reclamation and DWR are all providing funding for the CEQA and NEPA analyses, and all of the parties to the Yuba Accord are actively participating in the preparation of the EIR/EIS. Besides satisfying the legal requirements of CEQA and NEPA, the EIR/EIS also will contain a scientific analysis that will test whether the Yuba Accord provide fisheries conditions that are equivalent to or better than the conditions that would be provided by the RD-1644 long-term requirements, with no significant impacts. A public draft of the EIR/EIS will be available in the spring of 2007, with a final document in mid- to late summer of 2007. The schedule for the EIR/EIS has slipped a bit from earlier schedules due to the complexity of the modeling required for the Accord plus the efforts to include the comments of about a dozen key stakeholders.
11. In addition to the work on the EIR/EIS for the Yuba Accord, the various parties to the consolidated litigation with the SWRCB regarding RD-1644 agreed to stay the litigation while the Yuba Accord environmental process is being completed. By order dated March 13,

2006, the Superior Court of the State of California granted YCWA's motion to stay the proceedings in the consolidated cases pending either successful settlement or evidence that the conditional settlement will not be implemented. Hopefully, successful implementation of the Yuba Accord ultimately will allow for dismissal of the consolidated cases by all parties.

12. The 2007 Pilot Program is an integral and vital element of the Yuba Accord. Recognizing that completion of CEQA and NEPA analysis for the Yuba Accord at an appropriate level of detail will be a time-consuming process, and, eager to continue to reap the potential benefits of the Yuba Accord, all of the parties to the Yuba Accord agreed to the Pilot Program approach again in 2007. The 2007 Pilot Program closely mirrors the flow regimes, accounting rules, management framework and other aspects of the Yuba Accord. Implementing the 2007 Pilot Program will serve two important functions: first, the Pilot Program will continue to allow a real-world test of key elements of the Yuba Accord, including the flow schedules, the transfer accounting rules, the compliance provisions, and the planning work for the detailed monitoring studies that will evaluate the Accord flows. Second, implementation of the 2007 Pilot Program will maintain the momentum of this potential settlement, by allowing and requiring all of the parties to the Yuba Accord to continue to work cooperatively on the management of the Lower Yuba River resources. When the EIS/EIR is completed, and if the State Board approves the Yuba Accord in 2007, then the agreements, protocols and working relationships established in the 2007 Pilot Program can move seamlessly forward under the Yuba Accord.
13. The Yuba Accord and the 2007 Pilot Program are a paradigm shift in how Lower Yuba River instream flows are determined and managed. The Yuba Accord and the 2007 Pilot Program use the North Yuba Index to determine instream flows based on water year types. The proposed Yuba Accord Conjunctive Use agreements and the 2007 arrangements for conjunctive use will provide a backstop for dry year conditions, by making groundwater available for flow schedule augmentation and deficiency pumping. The seven flow schedules in the Yuba Accord, coupled with the North Yuba Index and the conjunctive use arrangements, will provide both higher instream flows and flows more tailored to the hydrology patterns and reservoir carryover storage on the North Yuba River. However, as has been described in other testimony, these additional instream flows will require driving the Yuba River system harder, with lower carry-over storage in many hydrologic year classes.
14. Testimony provided by Steve Grinnell and filed with YCWA's 2007 transfer petition describes the North Yuba Index (NYI), the mechanism for dispatch of the flow schedules under the proposed Yuba Accord and the 2007 Pilot Program. One of the key benefits of utilization of the North Yuba Index is that it is calculated utilizing both end-of-season carryover storage and current-year hydrology. This methodology has the fundamental benefit that the NYI closely tracks the North Yuba River and New Bullards Bar Reservoir, which are the only significant control facilities for water supply available for modification of flows in the Lower Yuba River.
15. The Yuba Accord flow schedules (which will be utilized in the 2007 Pilot Program), the NYI, and the relative exceedances of occurrence of the various flow schedules were carefully weighed and balanced by the Technical Team. It was recognized during the development of the Fisheries Agreement that a change to any one of the elements of the program would result in changes to other aspects of the program (for example, a change to the total flow volume for one flow schedule would result in a change in the probability of occurrence of all of the flow schedules). The Technical Team tested many different combinations of flow schedules, total volumes, and relative exceedances until, in the judgment of the majority of the Technical Team, the best overall balance of flows and probabilities was struck.

16. The Fisheries Agreement flow schedules were developed based on a regulatory baseline of the RD-1644 interim flow requirements, and the proposed Fisheries Agreement anticipates the request that will be made to the Board to modify RD-1644 to incorporate slightly modified RD-1644 Interim flow requirements as the permanent regulatory baseline for the Lower Yuba River. Similarly, the proposed Fisheries Agreement anticipated the Pilot Program concept, including a request to the Board for extension of the RD-1644 interim flow requirements.
17. A requirement for a regulatory baseline different than the RD-1644 interim requirements would have the potential to disrupt the balance struck in the Fisheries Agreement flow schedules, which would likely require reconsideration of the many of the fundamental elements of the proposed Fisheries Agreement. While the comprehensive analysis being undertaken for the EIR/EIS evaluation process for the Yuba Accord may ultimately suggest that some modification to or mitigation for the Accord may be necessary, denial of the 2007 Pilot Program petitions or disruption of the terms of the proposed Fisheries Agreement would not be warranted by current evidence.
18. YCWA and the other proponents of the Accord and 2007 Pilot Program recognize that the transfer element of the Yuba Accord does not resolve the pending questions or challenges that are associated with cross-Delta transfers. However, the Yuba Accord water purchase agreement will not increase the annual transfer volume through the Delta; current Delta transfers are limited by either transfer constraints (pumping limits, E/I ratio, etc.) or demand. Instead, transfers associated with the proposed Yuba Accord will 'firm up' current annual purchases by the EWA and others. This firm commitment will allow more efficient use of the water resources, including more refined planning, utilization of storage, and potentially flexibility in the timing of transfer pumping. The potential benefits and effects of this additional flexibility are being evaluated in the Yuba Accord EIS/EIR.
19. As has been described in other testimony, in the absence of an extension of the RD-1644 interim instream-flow requirements (that is, if the RD-1644 Long Term requirements were to go into effect on March 1, 2007), there would be potential for very serious Yuba County delivery shortages in 2008 under certain hydrologic conditions. While the probability of occurrence of hydrologic conditions that would lead to serious delivery shortages is relatively small, the resulting impacts of the delivery shortages within Yuba County under such conditions would be very substantial. If the State Board were to deny YCWA's petition to extend the RD-1644 interim requirements, then the Yuba County Water Agency Board of Directors would be in the very difficult position of having to decide whether or not to risk substantial dry year shortages in 2008 and subsequent years to implement the Pilot Program in 2007. Because of these risks, the YCWA Board may likely decide not to implement the 2007 Pilot Program if the State Board does not approve YCWA's extension petition. Additionally, the 2007 Pilot Program Fisheries Agreement will not become effective unless both of YCWA's petitions are approved by the Board.
20. In addition to the potential for substantial impacts to Yuba County deliveries, denial of YCWA's extension petition would raise additional concerns for YCWA and the other proponents of the proposed Yuba Accord. If the RD-1644 long-term requirements were to go into effect, then the pending legal challenges to RD-1644 probably would be re-activated. Denial of the current petition for extension therefore probably would pose additional challenges for the Yuba Accord that would not be based on the scientific or technical merits. This in turn would send a strong negative message to the collaborative teams that worked to develop the proposed Yuba Accord.

21. The Environmental Analysis of the 2007 Pilot Program concludes that the pilot program will not lead to unreasonable effects upon the various resources in the Lower Yuba River and Delta, and that the increased flows under the Pilot Program will provide an equivalent or higher level of protection as compared to the baseline of analysis. Similarly, the Initial Study/Proposed Mitigated Negative Declaration prepared for the one-year extension of the flow requirements of RD-1644 Interim concludes that the proposed project will not have a significant impact on the environment.
22. RD-1644 Interim flows have been the regulatory baseline in the Lower Yuba River for nearly six years. A continuation of that regulatory baseline, supplemented by the flow schedules in the 2007 Pilot Program, would provide an equivalent or higher level of protection for fisheries resources while retaining the flexibility for the Board to evaluate the scientific and technical merits of the proposed Yuba Accord through the EIR/EIS process, and then to take appropriate action on the petitions to the Board that will be filed to implement the proposed Yuba Accord.
23. In this testimony I have emphasized that the Fisheries Agreement of the proposed Yuba Accord (which is the basis of the 2007 Pilot Program) was developed through a collaborative process, wherein all of the participating parties represented their perspectives, the interests of their agencies or organizations, and their resource protection mandates during the crafting of the agreement. In light of the collaboration and support for the Fisheries Agreement, the progress in completing a detailed EIR/EIS analysis of the proposed Accord agreements, the importance of the 2007 Pilot program as an element of the Accord as well as a water transfer for 2007, and the potential risk of shortages in 2008 if an extension of the flow requirements of RD-1644 Interim is denied, the State Board should grant YCWA's extension petition so that this important phase of the Yuba Accord may continue.



**Yuba County Water Agency
2006 Pilot Program and Petition for Extension of RD-1644
Interim Flow Requirements**

Testimony of Tom Johnson

December 11, 2006

Yuba Accord – Pilot Program

Parallel Process

- **EIR/EIS process – underway**
 - Comprehensive evaluation of Accord benefits and potential impacts

- **2007 Pilot Program**
 - Funding for EIR/EIS and 2007 programs
 - Actual test of several elements of Accord

Continued Collaborative Participation
Continuing participation demonstrates the
commitment of the Accord signatories

2006 Pilot Program Update

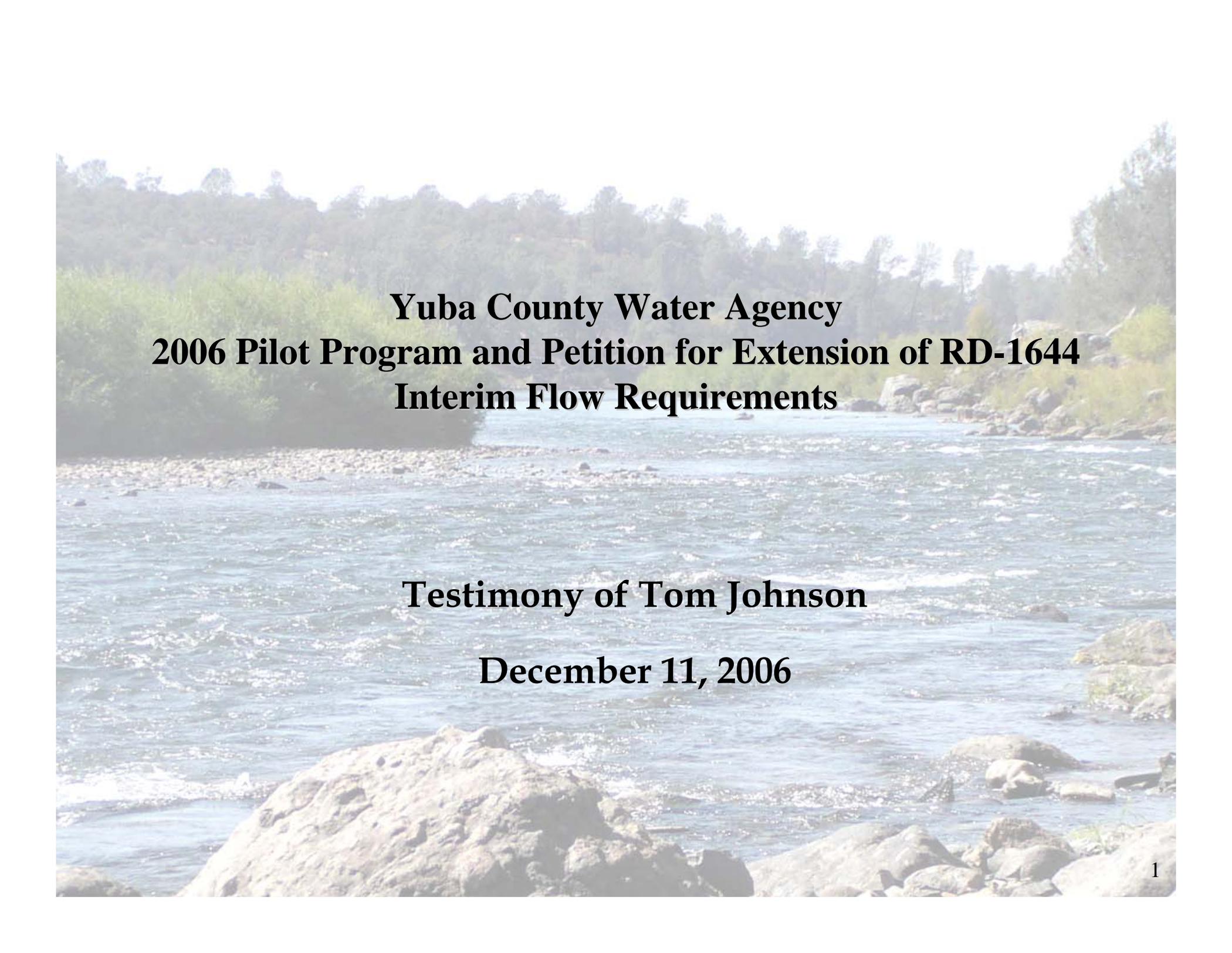
- 2006 a very wet year
 - Lower Yuba River flows generally well above Pilot Program flow requirements
- No transfer was effected in 2006
 - Delta in excess conditions all season
- River Management Team regular meetings, input, study plans, decisions
- 2006 suite of studies
 - Escapement, VAKI, Temp monitoring
 - 2007 studies to also include RST
- RMF funding by YCWA, plus substantial in-kind contributions by YCWA, CDFG

Accord Timeline

CEQA/NEPA Compliance Timeline:	
Public Review Draft EIR / EIS	April 2007
60-Day Public Review Period - Hearings / Meetings	April - May 2007
Draft BE for ESA Compliance	Dec 2006
Complete ESA Compliance	May 2007
Final EIR / EIS	August 2007
Agency Review and Approvals <ul style="list-style-type: none"> ● YCWA - Notice of Determination ● Reclamation - Record of Decision 	October 1, 2007
Other Actions:	
SWRCB Action on Petitions to Implement Yuba Accord	August 2007 - December 2007
Dismiss D-1644 Litigation	December 2007
Start Implementing Yuba Accord	December 2007

2007 Pilot Program – Importance

- Continued collaboration for the Lower Yuba
 - Increased flows from Accord flow schedules
 - Collective participation in management decisions via RMT
 - Funding of studies program via RMF
- Moving the Accord settlement forward
 - Funding and participation in the EIR/EIS for the Accord
 - Real-world testing of Accord provisions for accounting, decision management



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